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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Matter of	)	
	)	
Implementation of the Pay	)	
Telephone Reclassification and	)	CC Docket No. 96-128
Compensation Provisions of the	)	
Telecommunications Act of 1996	)	
54.703 of the Commission's Rules,	)	
47 C.F.R. § 54.703 (1997)	)	

JOINT COMMENTS OF VOCALL COMMUNICATIONS CORP. AND GALAXY LONG DISTANCE

VoCall Communications Corp. ("VoCall") and Galaxy Long Distance ("Galaxy"), by their undersigned counsel, hereby submit their Joint Comments in the above-captioned proceeding in response to the Commission's Public Notice of June 19, 1998.[1]

I. INTRODUCTION

VoCall and Galaxy are both providers of prepaid calling card services. Since a significant number of the calls placed using their prepaid card services originate from payphones, their interests are substantially impacted by this proceeding.

As shown below, the Commission must seriously reconsider its commitment to a market-based compensation rate for coinless payphone calls. In MCI Telecommunications Corp. et al. v. FCC,[2] the D.C. Circuit has ruled, for the second time, that the Commission's market-based

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[1] Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding, Public Notice, CC Dkt. No. 96-128, DA 98-1198 (June 19, 1998).

[2] MCI Telecomm. Corp. v. FCC, No. 97-1675 (D.C. Cir. May 15, 1998)("D.C. Circuit Opinion").

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methodology is not--and probably cannot--be justified. VoCall and Galaxy therefore urge the Commission to instead set the coinless compensation rate on the basis of incremental costs. A rate based on incremental cost would necessarily yield a much lower--but fair and compensatory--coinless rate, in the range of an estimated 6-11 cents.

In reevaluating the compensation rate for coinless payphone calls, the Commission should specifically take into account the unique nature of prepaid phone cards. Prepaid phone card services continue to increase in popularity and constitute a rapidly growing market. By offering consumers, particularly low-income users, a convenient and cost-effective alternative to high payphone and operator service rates, prepaid cards are clearly in the public interest. The compensation rate which the Commission sets for coinless payphone calls will inevitably constitute an additional cost element for consumers using prepaid cards to place payphone calls. To the extent that the Commission's existing market-based rate for coinless payphone calls is based on a methodology which inflates that rate, consumers are deprived of the low cost benefits which prepaid cards offer.

II. THE FCC MUST REASSESS ITS METHODOLOGY FOR SETTING THE COMPENSATION RATE FOR COINLESS PAYPHONE CALLS

A. A Fresh Look is Needed

The Commission must use the opportunity presented by the D.C. Circuit's remand to take a step back and thoroughly reevaluate its payphone compensation methodology. Given that the Court's decision represents the second time in less than a year that its coinless payphone compensation rate has been declared unlawful, it should now be abundantly clear that the Commission's market-based methodology is fatally flawed.

According to the Court,

> The Commission's reasoning may have depended on the premise that the market rate for coin calls generally reflects the costs of those calls. This assumption would hold true in a competitive market in which costs and rate converge. Unfortunately, the Commission never went through the steps of connecting this premise with its reasoning in the Second Order. Nor did the Commission expressly claim that costs and rate do in fact converge in the coin call market....[3]

The Court's ruling implies that to the extent that the payphone market is not a competitive market, it is not logically possible to derive a market-based coinless rate by subtracting the costs of those calls from the local coin rate. The Court also highlights the Commission's own acknowledgements that because of locational monopolies, "the coin call rate may potentially diverge from coin call costs."[4] Thus, the very foundation of the Commission's market-based methodology is undermined by the Court's ruling. Unless the Commission can show the payphone market to be a competitive market--an impossible task, given both the realities of the payphone market and the record in this proceeding--its market-based methodology cannot be justified under the Court's decision. For the Commission to continue to attempt to justify a market-based approach, at this point, would be folly.

In short, the Commission must fundamentally reevaluate its coinless payphone compensation methodology guided by principles discussed below.

B. Market-based Pricing is Unjustifiable

The Court's ruling, Section 276 of the Telecommunications Act of 1996, and the reality that competition does not exist in payphone markets all make abundantly clear that market-based

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[3] D.C. Circuit Opinion, slip op. at 5.

[4] Id. at 6.

pricing for coinless payphone calls cannot be justified. As a result, the Commission should abandon its market-based pricing methodology.

As explained above, the Court's ruling overturns the Commission's $0.284 market-based rate, explaining that it is not possible to derive a market-based rate by subtracting avoided costs from a market rate charged for coin calls. Unless the Commission can show the payphone market to be competitive--in contravention of both the facts and record in this proceeding--it would appear that its market-based methodology will remain unjustifiable and thus unlawful.

Section 276 of the 1996 Act requires that the Commission "establish a per call compensation plan to ensure that all payphone service providers are *fairly* compensated for each and every completed intrastate and interstate call...."[5] The Commission's market-based coinless rate simply will not result in fair compensation. To the contrary, a market-based rate will result in substantial overcompensation for payphone service providers ("PSPs"), and such overcompensation is likely to become more excessive over time as coinless payphone compensation rates escalate with market-driven local coin rates.

The Commission's market-based rate is most fundamentally unjustifiable because the payphone market is not a competitive market. Indeed, it is a contradiction to attempt to establish a market-based rate in the context of a non-competitive market--but this is just what the Commission's payphone compensation methodology attempts to do. For this reason, so long as the Commission continues to embrace a market-based approach, it's rulings are likely to be overturned on appeal.

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[5] 47 U.S.C. § 276 (1997)(emphasis added).

In its Report and Order, the Commission acknowledged the lack of true competition in the payphone market: "there are certain locations where, because of the size of the location or the caller's lack of time to identify potential substitute payphones, no "off-premises" payphone serves as an adequate substitute for an "on-premises" payphone."[6] Even the American Public Communications Counsel, a payphone industry representative, admits in Comments previously submitted in this docket that "market forces do not operate freely."[7] The reality in the payphone market today is that consumers will not elect to seek out other nearby payphones in order to compare local coin rates between the phones and select the phone with the lowest coin rate.[8] Moreover, the fact that pennies cannot be used in payphones is further indication that payphone pricing is not truly competitive. Absent the ability to set rates in units smaller than five cents (when the local coin rate generally ranges from 25 to 35 cents), it is simply not possible for payphone rates to be genuinely set in response to competitive pressures.

Another factor that undermines competition in payphone markets today is the commission structure which places upward pressure on payphone rates.[9] In fact, the Commission has stated that location providers can often "contract exclusively with one PSP to establish that PSP as the

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[6] In Re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 20541, 20549 (1996) ("Payphone Report and Order").

[7] Comments of APCC to the Public Notice in CC Dkt. No. 96-128, at 2 (Aug. 26, 1997).

[8] When the Commission declined to adopt the "caller pays" system (under which the caller would pay for the call by depositing a coin), the Commission effectively abandoned the ultimate market-based solution. Since that time, the Commission has been forced to struggle with the dilemma of a market-based model which excludes the necessary component of the consumer.

[9] See, e.g., Comments of TRA to the Public Notice in CC Dkt. No. 96-128, at 18 (Aug. 26, 1997).

monopoly provider of payphone services."[10] Competition to pay high commissions drives up payphone rates, and operates against the development of competition between PSPs to establish lower end user rates.[11]

C. Compensation for Coinless Payphone Calls Should Instead be Cost-Based

A cost-based approach ensures "fair" compensation for payphone providers and is in compliance with the Court's remand. A fair compensation rate based upon cost would result in a compensation rate for coinless payphone calls far lower than the existing $0.284 rate (see infra at p. 7).

VoCall and Galaxy believe--as do numerous other parties in this docket--that the Commission should base the coinless rate on incremental costs. In other words, the Commission should set the coinless compensation charge on the basis of the incremental costs to the PSP of supplying access to the payphone for coinless calls.

A cost-based approach would ensure both "fair" compensation as a coinless rate which would actually be based on PSP costs. Numerous parties have supplied the Commission with ample evidence that an incremental cost approach fairly compensates PSPs for their costs in originating access code and subscriber 800 calls.[12] The current $0.284 rate is inflated and is

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[10] Payphone Report and Order at 20549.

[11] See also In Re Billed Party Preference for InterLATA 0+ Calls, Second Report and Order and Order on Reconsideration, 13 FCC Rcd 6122 (1998). According to the Commission, "[m]any OSPs using this strategy agree to pay very high commissions to both premises owners and sales agents who sign up those premises owners and claim, as a consequence, they must assess very high usage charges to consumers placing calls from payphones." Id. at 6127.

[12] See, e.g., Reply Comments of CompTel to the Public Notice in CC Dkt. No. 96-128, at 5-6 (Sept. 9, 1997); Reply Comments of WorldCom, Inc. to the Public Notice in CC Dkt. No. 96-128 at 4-5 (Sept. 9, 1997); and Reply Comments of ITA to the Public Notice in CC Dkt. No. 96-128 at 2 (Sept. 9, 1997).

likely to increase as the coinless rate escalates with market-driven local coin rates. Absent a compensation rate based upon costs, carriers and customers will inevitably be forced to overcompensate PSPs.

As indicated above, the Court's ruling appears to effectively undermine the Commission's market-based methodology for setting the coinless rate. At best, the Commission will face further court challenges (and likely delays in implementing payphone compensation which are certainly not in the public interest) if it continues to attempt to justify that methodology on the basis of the record here. By contrast, a cost-based coinless rate would eliminate these legal concerns and enable the Commission to effectively move forward, consistent with the public interest, in implementing a payphone compensation rate likely to withstand judicial scrutiny.

D. A Cost-Based Approach Necessarily Yields a Lower Compensation Rate

As the record in this docket indicates, a cost-based methodology would yield a rate substantially lower than the existing $0.284 coinless rate.

AT&T, MCI, Sprint and other parties have provided detailed analyses of the actual incremental costs of coinless payphone calls, with reasonable and compensatory rates ranging from 6 cents per call (Sprint),[13] to 8.3 cents per call (MCI),[14] to 11 cents per call (AT&T).[15] VoCall and Galaxy urge the Commission to either adopt one of these cost methods or a blended

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[13] Reply Comments of Sprint Corporation to the Public Notice in CC Dkt. No. 96-128, at 4 (Sept. 9, 1997).

[14] Reply Comments of MCI Telecommunications Corp. to the Public Notice in CC Dkt. No. 96-128, at 3 (Sept. 9, 1997).

[15] Comments of AT&T to the Public Notice in CC Dkt. No. 96-128, at 3 (Aug. 26, 1997).

approach using a combination of the methods. Such detailed, cost-based calculations will best ensure that PSPs are fairly compensated for coinless payphone calls.

III. CONCLUSION

For the reasons stated above, VoCall and Galaxy urge the Commission to adopt a compensation methodology based on incremental costs resulting in a significantly lower compensation rate for coinless payphone calls.

Respectfully submitted,

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July 13, 1998

CERTIFICATE OF SERVICE

I, Elizabeth Holowinski, an attorney with the Law Offices of Thomas K. Crowe, P.C., hereby certify that on this 13th of July, 1998, I have served a copy of the foregoing Joint Comments of VoCall Communications Corp. and Galaxy Long Distance by first-class U.S. mail, postage prepaid, or by hand delivery (where marked by "*"), to the below-listed parties.

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